

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE PALEO et al.,

Defendants.

CASE NO. 2:22-cr-00180-LK

ORDER GRANTING MOTIONS TO
WAIVE PRESENCE

This matter comes before the Court on the motions of Defendants Timothy Hursh, Araceli Salas, Jose Paleo, and Ryan Holmquist to waive physical presence at the upcoming in-person hearing on Defendants' motion to continue the trial date. Dkt. Nos. 188, 192, 195, 196; *see* Dkt. No. 178. The hearing is scheduled for December 7, 2023 at 2:00 p.m. Dkt. No. 183.

Mr. Hursh and Mr. Paleo are currently in custody, are both aware of the motion to continue the trial, have each filed a speedy trial waiver in support of the same, and have either filed a waiver of presence or indicated that they will be doing so. Dkt. No. 189; Dkt. No. 195 at 1; *see* Dkt. Nos. 52, 122, 149, 180, 194. Likewise, Ms. Salas and Mr. Holmquist join in the motion to continue the trial, have filed speedy trial waivers in support of the same, and have filed waivers of presence at

1 the upcoming hearing. Dkt. No. 192 at 2; Dkt. No. 196 at 3; *see* Dkt. Nos. 190, 191, 197. Ms. Salas
2 is released on bond and recently gave birth in California. Dkt. No. 192 at 1; *see* Dkt. No. 75. Thus,
3 she requests that her physical presence at the hearing be waived due to her “personal
4 circumstances, the great distance involved, and [the] associated costs of attending court from
5 afar[.]” Dkt. No. 192 at 2. Mr. Holmquist is also out of custody and complying with the provisions
6 of his appearance bond, and therefore requests to waive presence at the hearing. Dkt. No. 196 at
7 1; *see* Dkt. Nos. 63, 171.

8 In this particular instance, the Court finds that to the extent these Defendants’ presence at
9 the continuance motion hearing is necessary, such presence may be waived. *See, e.g., United States*
10 *v. Gebremedhin*, No. 2:23-cr-00053-RAJ, Dkt. No. 74 (W.D. Wash. June 6, 2023) (granting
11 defendant’s motion to waive presence at continuance motion hearing); *United States v. Hernandez*,
12 No. 3:18-cr-05579-RJB, Dkt. No. 393 (W.D. Wash. Jan. 24, 2019) (noting several defendants’
13 presence waived at continuance motion hearing).¹

14 Given that Mr. Hursh, Mr. Paleo, Ms. Salas, and Mr. Holmquist are aware of the motion to
15 continue the trial, have each filed a speedy trial waiver in support of the same, and have either filed
16 a waiver of presence or indicated that they will be doing so, the Court GRANTS Defendants’
17 motions, Dkt. Nos. 188, 192, 195, 196, and ORDERS that:

- 18 1. Mr. Hursh is not required to be present during the December 7, 2023 hearing and shall
19 not be transported to the courthouse for this hearing.

21 ¹ Federal Rule of Criminal Procedure 43(a) states that a defendant “must be present at: (1) the initial appearance, the
22 initial arraignment, and the plea; (2) every trial stage, including jury impanelment and the return of the verdict; and
23 (3) sentencing.” However, the Court has not identified any authority stating that Rule 43(a) requires a defendant’s
24 presence at a hearing on a pretrial motion to continue. *See United States v. Nelson*, No. 17-CR-00533-EMC-1, 2020
WL 3791588, at *4 (N.D. Cal. July 7, 2020) (noting the dearth in Ninth Circuit authority stating that Rule 43 extends
to pretrial hearings); *see also* Fed. R. Crim. P. 43 Advisory Committee notes to 1944 amendment (the principle setting
forth the defendant’s presence at arraignment and trial “does not apply to hearings on motions made prior to or after
trial[.]”); *United States v. Gonzales-Flores*, 701 F.3d 112, 119 (4th Cir. 2012).

2. Mr. Paleo is not required to be present during the December 7, 2023 hearing and shall not be transported to the courthouse for this hearing.
3. Ms. Salas is not required to be present at the December 7, 2023 hearing.
4. Mr. Holmquist is not required to be present at the December 7, 2023 hearing.

Dated this 6th day of December, 2023.



Lauren King
United States District Judge